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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 273

RUSSELL SCOFIELD, LAWRENCE HANSEN, EMIL STEFANEC, and GEORGE KOZBIEL, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, and INTERNATIONAL UNION, UAW, *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT INTERNATIONAL UNION, UAW

Opinion Below

The Opinion of the Court of Appeals for the Seventh Circuit is reported at 393 F. 2d 49 and appears in the Appendix at pp. 151-161. The Labor Board's Decision and Order is reported at 145 NLRB 1097 and appears in the Appendix at pp. 125-150.

Jurisdiction

The Opinion of the Court of Appeals for the Seventh Circuit (A. 151-161) and that Court's Judgment (A. 162-163) were entered on March 5, 1968, and a Decree in con-

formity therewith was entered on April 16, 1968 (A. 167-168). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether a union restrains or coerces employees in violation of Section 8(b)(1)(A) of the NLRA by fining employee-members for violating a ceiling on incentive-pay earnings promulgated by the union and agreed upon with the employer.

2. Whether the petition for certiorari was filed within the 90-day period prescribed by 28 U.S.C. 2101(c).[1]

Statute Involved

Section 8(b)(1) of the National Labor Relations Act provides that it shall be an unfair labor practice for a labor organization or its agents "to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . ."

Statement

In this case certain members of the UAW employed at Wisconsin Motor Corporation have challenged a Union regulation—in effect since 1944 and periodically bargained with the employer—which sets pay ceilings for all members of the Union earning incentive wages. Evaluation of the pending question must begin with an understanding of the long struggle of the labor movement against incentive

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[1] In granting certiorari in this case (89 S. Ct. 120) the Court reserved for further consideration the question whether the petition was timely filed. That issue is fully reviewed in the Brief for the National Labor Relations Board, and we deem it unnecessary to expand on the presentation thereon at p. 9 of our Brief in Opposition.

pay—a struggle from which was born the particular arrangement at UAW Local 283, by which the dangers of incentive pay are sought to be ameliorated by an upper limit on individual incentive earnings.

1. The opposition of labor to incentive pay is familiar history (see, generally, Appendix B to the Trial Examiner's Report, A. 120-125). In the early years of the century and in the formative years for industrial unions, *hourly pay* became the rallying cry of workers hard-pressed by abuse of incentive schemes resulting in speed-up and worker demoralization. The evils of incentive pay were obvious and numerous—1) the effort to earn a decent wage became a bitter daily contest between workers for maximum personal output; 2) as piece-workers exerted themselves to achieve adequate earnings, employers repeatedly reduced the piece rate in an endless and debilitating "speed-up"; 3) older and physically less capable workers would be fired or required to subsist on limited earnings while younger workers with more stamina would outdistance them on the payroll; 4) pay differentials fostered jealousies and hostilities which further divided industrial workers and helped forestall the unity needed for union organization.

In the 1930's, when organization among industrial workers was first being achieved on a wide and significant front, the evils of incentive pay were further exemplified by the "Stakhanov Movement" in the Soviet Union. In 1935, in an effort to increase industrial production, the Soviet government made a national hero of Aleksey Stakhanov, a coal miner who had achieved an unprecedented increase in his daily mining output.[2] Stakhanovism sym-

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[2] "Aleksey Stakhanov . . . [was] a coal miner in the Donets Basin, whose team succeeded in increasing its daily output sevenfold. The Soviet Government, anxious to speed up fulfillment of the Five-Year Plan, en-

bolized to industrial unions in other nations the worst excesses of the incentive system. At the very first UAW Constitutional Convention, held in 1935, objections were voiced to the American counterpart of the Stakhanovite speed-up. During the debate on Resolution No. 225, one of whose points was "abolition of speed-up and piece work," the following colloquy ensued:

> "Delegate Marshall, 93: There is something else I would like to state. Down in Kansas City we have the piece work system. They take the fastest man on the job and they base the piece work rate on that fastest man, and I think that is unjust to the entire crew. It makes it impossible for the men to maintain the standard of wages they should be able to maintain . . .
>
> "President Martin: That is included in the abolition of the piece work system."

2. In the 1930s the UAW met with considerable success in its efforts to replace incentive pay with hourly wages. But after Pearl Harbor the national interest in maximum defense production was urged in some quarters to support renewed use of incentive pay. This gave rise to grave concern within the Union's ranks, reflected in the "majority report on incentive pay" adopted by the UAW's Eighth Constitutional Convention in 1943:

> "Whereas: The workers of the automobile industry, without submitting to the dangers and injustices of piece-work plans, have increased the productivity of

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couraged the Stakhanov movement, and Stakhanovite workers received high pay and other privileges. Whether it was spontaneous or not, the Stakhanov movement gained wide following . . . It has been widely criticized outside the USSR as another form of the speed-up system, fought by labor unions throughout the world." Columbia Encyclopedia, 2d Ed., p. 1880.

the auto industry to the highest level in the history of this or any other industry; and

"Whereas: Despite these facts the Automotive Council for War Production, representing management, management spokesmen in the War Production Board, spokesmen outside and inside the union have within the last year inaugurated a drive for the introduction of piece-work systems or so-called incentive plans in the automotive and aircraft industries . . .

"The International Union of the UAW-CIO reiterates emphatically its traditional opposition to the introduction of incentive or piece-work plans in the plants within our jurisdiction where such plans do not exist. The International Union will continue to leave to the autonomy of Local Unions the continuance of piece-work systems in keeping with the minimum standards set forth by the Columbus Board meeting.

"This Convention of the UAW-CIO takes a firm position against extension of incentive pay plans because we believe that piece-work will neither bring our Nation maximum war production nor provide workers with an adequate annual wage.

"Piece-work will result only in further aggravating the dislocation and unbalancing of production schedules, resulting in layoffs, unemployment and dissipation of our manpower. Piece-work systems would have the result of further intensifying the problem of wage inequalities and differentials, will block the union's efforts to establish an industry-wide wage agreement based upon equal pay for equal work, and will further demoralize workers who are, at present, getting less money for doing the same work. Piece-work systems would reintroduce the old system of speed-up, in which the worker is robbed of higher earnings through man-

agement's using every insignificant engineering change or pretext to cut rates.

"All the above factors justify the conclusion that the introduction of the piece-work plan will create new labor grievances, add to labor unrest in our vital war plants, and make more difficult the achievement of uninterrupted and maximum production. The membership of the UAW-CIO, as we have many times proved, is vitally interested in achieving maximum production, but are convinced that this objective cannot be achieved through the introduction of piece-work plans . . ."

Upon the approval of incentive rates by the War Labor Board, UAW locals sought means to ameliorate their dangers. In 1944 the members of UAW Local 283 at Wisconsin Motor Corporation—which pays substantial numbers of its workers on an incentive basis—determined that a formal ceiling should be placed upon members' piece-work earnings. The genesis of this action is described in testimony by the Local's 1944 leader (A. 44-45):

"We talked about well, what are we going to do. We have got to do something. You know, in the shop there around Thanksgiving Day or near Christmas, why there was layoffs and the fellows were getting older. Some of the fellows were getting older and the young fellows would come in and they would push, push, push, push, so we wanted to see that this labor state keep as many fellows working as we possibly could, and we know if we put this thing on there it would provide for at least a few more fellows to stay at work. So we thought the thing over. I'd say that it wasn't any board of directors. It was the group. They voted on it at the union and they have had many

a chance over the years to kick it out or put it in or whatever. In fact, it has been brought up and I'd say ninety eight per cent of the fellows right today are 100 per cent for this ceiling because it provides jobs. It provides for not too much pressure working piece work fellows. I don't know whether you have ever done that or not; but there is always a pressure, a pressure all the time. You want to make out. You want to make as much as you can up to a certain point and we figured well, here's a leaving off period and we made a survey of this district around here number ten. We went all the way to Detroit. We looked at different contracts. We contacted different people to try to get as fair a rate as we possibly could. So we was over to Chicago on the labor board then and—

Q. This was in 1944? A. 19— it was, I think it was.

Q. You so testified, so go ahead. A. We wanted to set up classifications. That's what we did up there, classifications. That's where you get your five grades. So I think Mr. Wurtz and Mr. Todd [respectively Vice President and President of Wisconsin Motor Corporation] and oh, Mr. Olson and myself, maybe another one or two. I think Ray Daniels was there, and we probably went up there maybe three meetings, four meetings, and finally the labor grade was set up and then as we knew, there was a war on, we didn't want to hold back anything, but we also wanted to provide jobs for the fellows. . .'' [3]

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[3] The purpose of the Local 283 piece-rate ceiling was similarly described by Union witness Dale Steinfeldt (A. 43):

". . . production ceilings were one of the main points of disagreement and the union steadfastly held to the principle that we thought that our production workers had just about reached their capacity in productive power and that any increase in the ceilings would result

Following these events, a regular membership meeting of the local resolved on March 19, 1944, that "if, and when, the proposed machine base rates in the contract are approved by the W.L.B., the Union take steps to place a ceiling on piece work earnings. That a limit of 10¢ per hour over and above the proposed machine base rates be included in the next contract" (R. Exh. 9). A month later it was moved and carried at a membership meeting that "men turn in no more than 10 cents per hour over and above the new machine rates" (*ibid*). In 1946, the membership voted that penalties be imposed in the form of fines for violation of the prevailing piece-rate ceilings (*ibid*). In 1961 the earning ceiling resolution was approved as a by-law of Local 283 (Tr. 79-82).

3. The Company has long accepted the ceilings applicable to Union members' wages. While it has not itself enforced the ceiling, and has regularly paid every member's validated earning claim even if known to exceed the applicable ceiling, it has taken no disciplinary action against any member who complies with the piece-rate ceiling (A. 67-69). Indeed, the Company has so far acquiesced that it has periodically bargained out the level of the Union incentive ceiling and obtained agreements thereon. For instance, the 1953 contract between the Union and the Company (G.C. Exh. 17) provided that the Union would "Increase the ceilings on all piece work jobs a total of thirteen cents (13¢) per hour effective July 1, 1953 over the ceilings on piece work jobs in effect on April 30, 1953." Similarly, the strike settlement agreement of August 14,

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in a hardship or physical, mental and otherwise being placed on them and if the production ceilings were removed or increased to any great extent that this would result in the company making efforts to change the methods used on productive jobs and subsequently reduce the rates and this in turn would result in lesser amount of production employees being employed by the company."

1956 between the Union and the Company (A. 48-49) provided that "The ceilings on earnings is to be raised ten cents (10¢) per hour above the general increase of 1-1-56 and the ten cents (10¢) of 5-1-56 or a total of 23¢ per hour."[4]

In 1965 (after the Board trial of this case) ceilings were again a subject of intensive discussion in the contract negotiations between the Union and the Company. Following fruitless negotiations in sessions on January 18, 22 and 25, the issue was settled on January 26 by an agreement to an increase in the ceiling after the Company had stated that "there can be no settlement unless the ceiling is raised."[5] The formal Agreement of March 19, 1965 on "revisions of the 1962 Agreement . . . to be incorporated

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[4] In the 1956 negotiations the Company first asked for abolition of the ceilings while the Union favored their retention without alteration. The ultimate compromise on a ceiling increase was agreed to after the Company wrote to the Union (R. Exhibit 5) that "The Company is willing to compromise this issue on the following basis: Ceilings shall be increased twelve cents (12¢), however, the Company will be satisfied if the plant average increase for incentive workers is ten cents (10¢) over and above any general increase granted."

[5] The Union's minutes of the negotiations (which were given to the Company and posted in the plant) show the following for Jan. 26, 1965: "A review of the points remaining showed 10 items still unresolved. Todd asked if the Union will grant a 10¢ ceiling increase. Union said there will be no increase in the ceilings. Todd said there can be no settlement unless the ceiling is raised. Union said the ceiling is good for the Union and the Company and if they are removed it would create absolute confusion. Union said the ceilings are 40 to 50¢ per hour above the timing rate which is considered a fair days work if maintained. Todd read figures that he claimed shows that the spread between the timing rate and the ceilings has gradually diminished. Union said Todd was heard to say yesterday that the ceiling demand was withdrawn and if not he should have raised it yesterday when he made his proposal. Union said it is not fair that Todd should raise this major item at this late hour. Union said our people will not allow any raise in any manner, shape, or form in the present production ceilings. Todd said if there was a ceiling increase allowed under the new By-law it does not show up on the payroll records. Todd said if the Union will raise the ceiling 3¢ per hour we can continue to bargain. Union said we will agree to this. . . ."

into the new Agreement" (see *infra*, Appendix B., p. 34) stipulated that "The Union agrees to increase the Production Ceilings an additional 3¢" (*ibid.*). In the most recent negotiations over a new contract it was agreed between the parties on January 31, 1968 that the prevailing ceiling would be increased 5¢ and that increase has gone into effect.

Thus, for some fifteen years there have been formal agreements between the Union and the Company wherein it has been agreed that the piece-rate ceilings applicable to Union members would be maintained at specified levels.[6]

4. On the basis of the entire record the Trial Examiner found that the incentive ceiling "is the product of hard bargaining" between the Union and the Company (A. 69). The Trial Examiner also set forth in the following terms the considerations which have led the Union to establish the incentive ceiling (A. 70):

> ". . . the Union justifies the ceiling rule on the basis of apprehensions, which, as the literature on the subject would indicate, have their roots in industrial experience with incentive plans of earlier vintage, some of which have been acknowledged by management spokesmen as having been reasonably grounded. . . . These include expressed concern that a stepped up pace could result in: (a) employees working themselves out of jobs, (b) usher in the evil of 'stakhanovism,' under which a new productive norm is set, whereby the piece

[6] The Company's contractual acceptance of the piece-rate ceilings was specifically noted in the International Union's approval of this Local 283 ceiling by-law. A communication of February 14, 1961 (Tr. 82) from the Chairman of the UAW By-Laws Committee in response to the Local's request for approval of the by-law, stated that: "It is the opinion of the International By-Laws Committee that since the production ceilings are recognized by both the Company and the Union," the by-law "would not be improper or contrary to the provisions of the International Constitution."

> rate is lowered and the compensation for actual productive effort correspondingly reduced, (c) lower grade employees by excessive dissipation of their allowances, earning more than those in the higher ones, thus dislocating the actual pay scale and bringing about morale-threatening jealousies, as well as undermining the health-protecting purposes of the allowances."

Concerning the Union's "legitimate interest" underlying the ceiling regulation, the Examiner (A. 113) cited and approved authorities demonstrating "that the setting of production limits among pieceworkers is hardly new in our industrial life, and that it has its roots in experience under piecework and incentive plans giving rise to apprehensions, reasonably grounded, with which such a practice is designed to cope."

5. The Decision of the Labor Board of Jan. 17, 1964 expressly accepts the findings of fact of the Trial Examiner (A. 126) and concludes that no violation of the statute has occurred in this case. The Board particularly emphasizes the periodic bargaining between the Union and the Company over the incentive-pay ceiling, which the Company has accepted "as forming an important element of its negotiated wage structure." As the Board has found (A. 128-129):

> "Although the Company does not consider itself bound by the rule, and at various times during negotiations has unsuccessfully sought to induce the Union to drop the ceilings, the Company nevertheless as a practical matter has accepted the ceilings as an integral part of the *modus operandi* and has recognized the ceilings as forming an important element of its negotiated wage structure. So far as appears, the Company has never sought to discipline any of its

employees for adherence to the Union's ceiling restrictions. The Company uses the ceilings in computing wages and evaluating jobs. Ceilings have also played an important role in the negotiation of collective-bargaining agreements between the Company and the Union. Thus, in 1953, one of the Company's proposals was that the ceilings be increased at least 10 percent. The contract that year made provisions for a 13 cents per hour increase in ceilings. The 1956 strike settlement agreement provided for another increase in ceilings. In 1959, the Company made no request for the elimination of ceilings, but only requested that they be increased 10 cents.

"Moreover, while abstaining itself from enforcing the ceiling rule, the Company voluntarily aids and cooperates with the Union in the administration of the rule. Thus, the Company joins in the "banking" procedures by making the necessary bookkeeping entries. The Company also allows the ceilings to be posted on its bulletin boards. And it assists the Union in policing enforcement of the rule by making available to the Union the members' production records and allowing the union stewards to inspect such records on Company time without loss of pay."

6. The majority in the Court below finds this Court's decision in *Labor Board* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, dispositive in favor of an affirmance of the Board's ruling. In reaching that conclusion the Court does not purport to apply *Allis-Chalmers* in any rubber stamp fashion. On the contrary, the opinion carefully reviews and approves the Board's finding that "ceiling rules derive from a legitimate, traditional interest in union objectives," having to do with the effect of unrestricted incentive pay upon employment security, employee morale,

and employee health (A. 157). The Court concludes (A. 158) that the union rule here in issue "has a rational basis, and we cannot say that it was not reasonably calculated to achieve a permissible end," and "since the end here was a legitimate union objective and the means were appropriate to enforce it, our hand should be stayed." Thus the case comes to this Court with Trial Examiner, Board and Court below all finding legitimate Union purpose validating the Union rule questioned here.

Summary of Argument

A

Entirely legitimate interests of unionism are advanced by a by-law imposing a ceiling on members' incentive-pay earnings. In the exercise of the statutory power of unions to make binding judgments concerning the interests of all employees they represent, it has been the consistent judgment of industrial unions that hourly pay which discounts entirely individual differences in employee productivity best serves the workers' interests. Individual productivity wage is now not the rule but the exception in industrial labor relations.

A union has indisputable statutory power by negotiation of straight hourly wages to discount entirely an individual's high productivity, even for employees who have never voted for or joined the organization. As a necessary corollary, it seems clear that a union legally empowered to *deny* productivity pay to *non-members* may lawfully set a *maximum* on productivity pay of its *own members*. Excessive productivity-pay differentials which arise in the absence of a piece-rate ceiling often cause rivalry and bad feeling in the plant; even worse from the union's standpoint, the hostilities engendered by unrestricted productivity-pay differentials create a problem of real con-

cern for the union as an operating association seeking to avoid internal frictions, particularly between older and younger members. There can thus be no gainsaying the record and multiple findings in this case concerning the legitimate trade union interests which underlie the by-law here in issue.

B

The statutory requirement that wages and working conditions be bargained between the union and the employer was fully met in this case. Petitioners' efforts to shift the emphasis of their argument from their own rights as dissenting unionists to the collective bargaining rights of the employer cannot succeed; the plain and simple answer to their new emphasis is that there is before this Court the amply-supported finding of the Labor Board that the piece-rate earning ceilings applicable to Union members have been repeatedly bargained out and accepted by the employer. Indeed, the Wisconsin Motor Corporation has so far accepted the earning ceilings applicable to Union members that it has not only assisted the Union in their implementation in various ways, but has fully and repeatedly bargained the amount of the ceilings, securing increases for the duration of successive collective bargaining agreements. Since the Board's finding that the Company has accepted the piece-rate ceilings is fully supported by the record, petitioners cannot invalidate this Union by-law on the theory that it invades the collective bargaining rights of the employer.

We have thus demonstrated that the Union by-law challenged in this case reflects wholly legitimate interests of the Union and its members and that the bargaining requirements of Section 8(b)(3) with respect to wages and working conditions have been met here by 15 years of consecutive negotiations between the Union and Company.

Upon these facts there remains no room, we would submit, for finding a violation of Section 8(b)(1) of the statute. That is the import of the decision of this Court in *Labor Board* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, which requires an affirmance of the holding below.

C

A union rule which is not ultra vires may be enforced by discipline on union members under Section 8(b)(1) unless it invades employer or public rights protected by Section 8(b) provisions. The key to the applicability of Section 8(b)(1) lies neither in the form of discipline employed nor Labor Board judgments concerning the merits or desirability of a challenged union rule. Rather, we suggest that a different guiding principle emerges from this Court's decisions in *Allis-Chalmers* and *Marine Workers:* where specific provisions of Section 8(b) secure freedom from union restraint, union discipline impairing such freedom may infringe Section 8(b)(1)(A) notwithstanding the proviso, but in no event does a violation arise from the claim by a union member that Section 7 gives him a general "right to refrain" from union rules. Within the area of membership regulation in the legitimate interests of the union and its members, it appears clear that the statute will not permit Labor Board intrusion on any theory that union members have a "protected" Section 7 right to defy their union's rules. Section 8(b)(1) in its "restrain or coerce" proscription does not grant employees the right to be union members on their own terms, abiding only by those union rules with which they agree or which the Labor Board and the courts might uphold as reasonable or desirable.

While within the area of legitimate union concern regulation of members is thus wholly preempted from Section

8(b)(1) restriction, no such immunity is found where the union rule enforced upon the member has the effect of transgressing specific guarantees found in other provisions of Section 8(b). The applicability of the Section 8(b)(1) exemption for union regulation thus turns upon whether the regulation is confined to the area of union concern over the members' conduct or reaches beyond it to transgress the statutory rights of others protected under Section 8(b). In that event only does union discipline lose the exemption from Section 8(b)(1). Since the Union by-law here at issue is justified from any point of view in the interest of the Union and its members and does not infringe the statutory rights of the employer or the public protected by Section 8(b), the decision of the Trial Examiner, the Labor Board, and the Court below should be sustained.

Argument

In its earlier stages the litigation of this case centered upon a claimed distinction between the mere assessment of fines against the petitioners and the Union's efforts to collect those fines through judicial suit. Petitioners in this Court now largely abandon that distinction—as they must after the holding in *Labor Board* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, that suit for collection of union fines is not "coercion" forbidden by Section 8(b)(1). Accordingly, we do not repeat the argument we made to this Court in *Allis-Chalmers* on the question of judicial collection of union fines.[7]

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[7] We note for the information of the Court that the Union's state court suit which first gave rise to this case has recently been dismissed. A judgment was entered by the County Court for Milwaukee County on June 12, 1968, dismissing *UAW* v. *Scofield* (Case No. 518-597) in conformity with an opinion of that Court of February 7, 1968. The opinion found that Scofield having earlier been suspended from mem-

Petitioners do, however, assert that this case differs from *Allis-Chalmers* because 1) the underlying goal of the piece-rate ceiling by-law is less legitimate or worthy than the strike-solidarity rule there involved, and 2) collective bargaining requirements are violated by the Union by-law here in issue. In the first two points of our Argument we answer these claims; in the concluding point we tender a construction of Section 8(b)(1) which would clearly differentiate union membership rules which Congress intended to keep outside the Labor Board's purview from those transgressing employer or public rights protected by the Act and needful of Labor Board vindication.

I

Entirely Legitimate Interests of Unionism Are Advanced by a By-Law Imposing a Ceiling on Members' Incentive-Pay Earnings.

In the area of wages, hours and working conditions, a union has indisputable power to make binding judgments concerning the interests of all employees it represents.[8] In

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bership by virtue of a former failure to pay sixteen dollars in fines, he was not subject to membership discipline in April of 1961 when the Union assessed the $100 fine in issue in this case. An appeal by the Union is pending in the Circuit Court for Milwaukee County.

[8] As this Court emphasized in *Allis-Chalmers*, 388 U.S. at 180, national labor policy "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. 'Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents. . . .' *Steele* v. *Louisville & N.R. Co.*, 323 U.S. 192, 202. Thus only the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances; the union may even bargain away his right to strike during the contract term, and his right to refuse to cross a lawful picket line. The employee may disagree with many of the union decisions but is bound by them. 'The majority-rule concept is today unquestionably at the center of our federal labor policy.' 'The com-

the exercise of that statutory power it has been the consistent judgment of industrial unions—reflected in the annual negotiation of thousands of collective bargaining agreements throughout the nation—that hourly pay which discounts entirely individual differences in employee productivity best serves the workers' interests. Indeed, in recent years there has been continuing decline in the number of industrial employees still earning incentive pay. In 1958 in manufacturing industries throughout the nation the proportion of workers paid incentive wages was 27% (BLS, Department of Labor, *Monthly Labor Review*, Vol. 83, No. 5, p. 460). By 1966 that figure had dropped to 16.5% according to a Labor Department study of incentive workers in manufacturing industries (see Appendix A, *infra*, p. 33). The study found a high of 26.4% of workers on incentive pay in New England to a low of 1.7% on the Pacific Coast. Thus, with five out of every six industrial workers now paid straight hourly wages, it is manifest that our federal labor law in no sense enshrines the "freedom of an individual to excel" principle which petitioners cite to this Court from a state court ruling (Brief for Petitioners, p. 18). Individual productivity wage is now not the rule but the exception in industrial labor relations.

Thus a union has indisputable statutory power by negotiation of straight hourly wages to discount entirely an individual's high productivity, even for employees who have never voted for or joined the organization. The piece-rate earnings ceiling here in issue is therefore doubly an *a fortiori* case of permissible union regulation. First, at

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plete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.' *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338."

Wisconsin Motor Corporation the Union has agreed that half of the work force shall be compensated on a piece-rate basis, and in this respect petitioners are already permitted productivity pay increments denied their fellow employees paid hourly wages. Second, petitioners joined the Union, though they did not have to do so under the statute (see 388 U. S. at 197, n. 37; A. 82-83) and the "service fee" option agreed to between the Union and the Company. Accordingly, unlike employees required *as such* to accept union determinations in the negotiation of their wages, petitioners made their own decision to belong and to accept union rules, including the piece-rate ceiling by-law. Surely in the area of wages majority rule is not less binding on those who opt for it within the union than on those who have it thrust upon them merely as employees for whom the union is the statutory bargaining representative. Thus it seems clear that a union legally empowered to *deny* productivity pay to *non-members* may lawfully set a *maximum* on the productivity pay of its *own members.*[9]

Moreover, unions are even more concerned to prevent excessive productivity-pay differentials among their own members than among workers whom they represent merely as employees in the bargaining class. Even in the plant excessive pay differentials which arise in the absence of a piece-rate ceiling often cause rivalry and bad feeling—*particularly in the ranks of older employees unable to work at a pace comparable to young men in their teens and twenties.*

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[9] Control of members' earnings has been a time-honored power exercised by labor unions in the common interest of their members. The usual context has been concern to prevent union members accepting employment at unduly low pay. That, for instance, was the situation in the 1867 New York case cited by this Court in *Allis-Chalmers* (p. 182, n. 9), where a fine was judicially enforced against a member who worked below the union rate. *Master Stevedores' Assn.* v. *Walsh*, 2 Daly 1. Union control of members' wage-rights was also the nub of this Court's opinions in *Elgin, Joliet* v. *Burley*, 325 U.S. 711 and 327 U.S. 661.

But within the union the same workers are not merely fellow employees; they are politically and socially allied to promote their mutual interests. There the hostilities engendered by unrestricted productivity-pay differentials create a problem of real concern for the union as an operating association, and a "generation gap" from pay differentials favoring the younger member is very much to be avoided. As stated by an eminent authority, piece-work limits "protect the union from being weakened by jealousies and dissensions" arising from pay differentials (A. 121). In sum, legitimate interests of unionism long recognized both in theory and practice support a by-law placing an upper limit upon union members' incentive-pay earnings and the Board so found in this case (see *supra*, pp. 10-11). The Court below (A. 157-158) added its own endorsement of the administrative finding that such ceiling rules as this "derive from a legitimate, traditional interest in union objectives."[10]

Nor can the record and findings concerning the legitimacy of this challenged by-law be overcome by petitioners' eleventh hour "featherbedding" accusation.[11] We find it

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[10] It is noteworthy that the rule here in issue is *far less severe* in its economic effect on employees than was the "no strikebreaking" rule in *Allis-Chalmers*. The ceiling rule does no more than to hold to a reasonable pay maximum workers who because of exceptional working speed and endurance would otherwise outdistance others on the payroll. By contrast, the *Allis-Chalmers* rule barred *any* remuneration at all to union members during a strike, and even subjected them to the risk of the employer's filling their positions with permanent replacements. Compared to the employment and earnings impact of that rule, the incentive pay by-law here is modest indeed.

[11] In their effort to turn this into a "featherbedding" case petitioners (Brief, p. 3, n. 2) quote the dissenting opinion of Board Member Leedom to the effect that "The record shows that the Union's production ceilings have reduced and slowed down production, that an employee can reach the production ceiling in 5 hours, and that the employees have read books, played cards and talked in the remaining time." *Neither the Trial Examiner nor the Board found such facts and they are not*

noteworthy that this extravagant and inapposite appellation was never employed by petitioners during the six years that this case progressed through the Labor Board and the Court below. Their last-minute resort to the "featherbedding" charge, entirely without foundation in the record, is the more surprising since the Trial Examiner's report *specifically contrasted* the incentive-pay ceiling in this case with featherbedding practices. As the Examiner stated it (A. 115, emphasis supplied):

> "Underscoring the irrelevance of the social appraisal of a given practice to an adjudicative proceeding is the fact that even after a committee of Congress has heard all viewpoints on a given matter and concluded that a practice is undesirable, between the conclusion and the enactment there is a long and uncertain path. In point is featherbedding, to which I have alluded. *In contrast with the practice here involved, of which I have found no mention in the record of the extended hearings in 1947 preceding the drafting of the bills, Congress heard a good deal of testimony on featherbedding.*"

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sustained by the record. Indeed, the Trial Examiner's Report specifically pointed to evidence indicating that at Wisconsin Motors employee productivity "compares favorably with that of the work forces in the other establishments" in the same region (A. 72). Even the single witness who testified that there had once been reading and card playing in the plant conceded that it had ceased (A. 36). Moreover, his testimony (A. 33) about idleness before closing time—asserting that the piece-rate production line stops at 1:45 P.M.—is offset by competent testimony that the remaining time before the end of the daily shift at 2:55 P.M. is used by the men to clean and service machinery and prepare materials for the next day's production (A. 41-42). Finally, even if piece-rate workers do have some idle time during this last hour and ten minutes of the work day, it must be noted that the Company's own piece rates provide 48 minutes a day for "personal time" and "fatigue time" to be used as and when the employee desires (A. 34-35); it is understandable that men who have been producing steadily since 7 A.M. with only 10 and 15 minute lunch breaks (A. 35) take their 48 minutes of "personal time" and "fatigue time" upon the conclusion of their daily labors.

That same contrast is found in a passage from an eminent authority quoted by the Court below (A. 158), that the purpose of pay limits applying to piece-workers "is not primarily to make work but partly to protect the union from being weakened by jealousies and dissensions arising from the fact that some workers receive better jobs than others, partly to prevent foremen from playing favorites in assigning jobs, and partly to prevent employers from cutting liberal piece rates or from using the high earnings of some workers as an argument against a general increase in piece rates."[12]

In short, there can be no gainsaying the record and multiple findings in this case concerning the legitimate interests which underlie the challenged Union by-law, and which entirely negate petitioners' "featherbedding" charge. Equally lacking in merit—as we next demonstrate—is petitioners' alternative suggestion that the challenged by-law is unlawful not because it invades their own rights but because it violates the statutory bargaining duty owed to the Wisconsin Motor Corporation.

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[12] It is also to be noted that there is not the slightest resemblance between the featherbedding practice Congress has forbidden and the by-law in the present case. Even the narrow proscription of Section 8(b)(6) concerning pay for "services which are not performed or not to be performed" was held by this Court (*Labor Board* v. *Gamble Enterprises*, 345 U.S. 117) to tolerate the hiring of local "stand-by" orchestras during concerts given by out-of-town orchestras—a construction which Senator Taft conceded "was probably right" (Hearings on Proposed Revisions of the Labor Management Relations Act, Senate Committee on Labor, 83rd Cong., 1st Sess., pt. 1 at 258). It is a far cry indeed from this Union by-law *limiting pay* for services which *are performed*, to the Congressional ban on a union *requiring pay* for services *not performed*.

II

The Statutory Requirement That Wages and Working Conditions Be Bargained Between the Union and the Employer Was Fully Met in This Case.

Throughout the extensive litigation of this case before the Labor Board and the Court below, petitioners' major theme was that the statute protects a union member's "right to work" from restriction by "coercive" union fines enforcing an earnings ceiling. In the wake of this Court's *Allis-Chalmers* decision rejecting a similar broad "right to work" claim and the finding by the Court below of the legitimacy of the challenged by-law in the members' common interest, petitioners have made a major shift of emphasis. Now they urge that it is not so much their own rights as dissenting unionists as the collective bargaining rights of the *employer* which they seek to vindicate here. They state that if the Union "wishes to impose production limitations, earnings ceilings, or any similar term or condition of employment, it can and must achieve this purpose through the usual collective bargaining process" (Brief for Petitioners, p. 19). Conceding that the Union is "privileged" to "negotiate upper limits on incentive pay [and] the Petitioners would be bound by any such agreement" (*id.* at pp. 6-7), it is urged that this by-law violates the statute because it "by-passes the normal collective bargaining process and thus is inimical to the policy of the Act" (*id.* at p. 9).[18]

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[18] The same collective bargaining point is made even more sharply in the Brief of *Amici Curiae*, Wisconsin Manufacturers Association, et al. (p. 9):

> "That some segments of the union movement have held a traditional position in opposition to incentive pay programs cannot be denied. That this position may be said to be consistent with 'legitimate union objectives' also may be admitted. But, it is submitted, the Board and the lower court have both missed the precise point

We may concede for the purpose of argument that under Section 8(b)(3) a union cannot refuse to bargain with the employer concerning a by-law which imposes production restrictions on member-employees—a proposition cogently espoused by the Ninth Circuit's decision in *Associated Home Builders* v. *NLRB*, 352 F. 2d 745. We would concede also that if a union refuses to bargain on a production-limit by-law, and thus violates Section 8(b)(3), fines upon members to enforce the by-law would violate Section 8(b)(1). See discussion *infra* at pp. 29-31. But we do utterly *deny* the premise of petitioners' argument that in the present case the collective bargaining requirements of Section 8(b)(3) have in any way been invaded by the challenged by-law. Before this Court there is the amply-supported finding of the Labor Board that the piece-rate earning ceilings applicable to Local 283 members have been fully and repeatedly bargained out and the employer has accepted the ceilings at agreed dollar levels for the duration of the collective contract.

Indeed, the record makes clear that the Company's interest in production is met in numerous respects; *Firstly*, it is doubtful whether the employer's interest in maintaining efficient employee production is impaired at all by the by-law, which does not impose a limit upon a member's production but only his drawing of *pay* for production above the applicable ceiling. In the provision for the "banking" of the extra production for future pay during "down" time there is incentive for members to continue to produce even if they have reached their daily earnings

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on this argument. If it is said that regulation of production is a legitimate aim of the union in that it protects jobs for more members, then it is identical in quality with the other legitimate aims of unions such as recognition, union security, seniority, grievance procedures, etc. Consequently, the issue is not whether the aim is legitimate, but whether, assuming its legitimacy, the union can handle it unilaterally—*outside* the collective bargaining agreement."

ceiling. *Secondly,* should an employee refuse to produce a fair day's work under a union pay ceiling the employer is free to discipline or discharge the worker, and in this sense it is to be doubted whether any union by-law can effectively invade the employer's right to production. *Finally,* and most importantly, the Wisconsin Motor Corporation has so far accepted the earning ceilings applicable to Union members that it has not only assisted the Union in their implementation in various ways, but has repeatedly bargained the amount of the ceilings, securing increases for the duration of successive collective bargaining agreements. Such increases were formally agreed to by the Union and the Company in the 1953 collective bargaining agreement, in the 1956 strike settlement agreement upon the terms of the new contract, in the 1965 agreement to contract modifications, and in the 1968 negotiations (see *supra,* pp. 8-10).

On this unchallengable record, no credence can be given to petitioners' unsupported contention (Brief, p. 20) that the Union is imposing "its own conditions of employment whether or not they are accepted by the employer in collective bargaining," for the incentive ceilings have been negotiated between the Company and the Union for some fifteen years. Concerning the interplay of union by-laws and the collective bargaining obligations of Section 8(b)(3) petitioners do present an interesting case, *but it is not this case.* Since the Board's finding that the Company has accepted the piece-rate ceilings is fully supported in the record, while the contrary contention finds no support at all, petitioners cannot invalidate this Union by-law on the theory that it invades the collective bargaining rights of the employer.

What is thus before the Court is a by-law supported by wholly legitimate interests of unionism and in no wise violative of the rights of the Wisconsin Motor Corporation.

Such a by-law, as we demonstrate in our concluding point, does not transgress Section 8(b)(1) of the National Labor Relations Act.

III

A Union Rule Which Is Not Ultra Vires May Be Enforced By Discipline on Union Members Under Section 8(b)(1) Unless It Invades Employer or Public Rights Protected by Section 8(b) Provisions.

We have demonstrated in the foregoing discussion that the Union by-law challenged in this case reflects wholly legitimate interests of the Union and its members, and that the bargaining requirements of Section 8(b)(3) with respect to wages and working conditions have been met here by fifteen years of consecutive negotiations between the Union and the Company. Upon these facts there remains no room, we would submit, for finding a violation of Section 8(b)(1) of the statute. That is the import of the decision of this Court in *Labor Board* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175. In *Labor Board* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424, this Court recently restated the nub of its *Allis-Chalmers* ruling: "*§ 8(b)(1)(A) assures a union freedom of self-regulation where its legitimate internal affairs are concerned.*" And the same opinion (*ibid.*) emphasizes that a Section 8(b)(1) violation arises from union discipline only where the union rule it enforces on the member "*is beyond the legitimate interests of a labor organization.*" The Trial Examiner, the Board, and the Court below, all found legitimate union interests to inhere in the by-law challenged in this case, and we are confident that this Court will take a similar view. On its face, therefore, the ruling in *Allis-Chalmers* requires an affirmance in this case. But, in the wake of this Court's recent holding in

Marine Workers, it appears appropriate to go beyond the generalization that a given union rule reflects "legitimate interests" of unionism to seek a standard for measuring legitimacy. To that end we suggest that there is an available and workable measure for determining whether a union rule falls within the area of its legitimate internal affairs or interests and the consequent immunity afforded by the proviso to Section 8(b)(1)(A).

At the outset it is clear that the distinction between the union regulation of members which is exempted from Board jurisdiction under the Section 8(b)(1)(A) proviso and that which is not so exempted *is not dependent upon the form of union discipline employed* to enforce the underlying union rule.[14] Thus, while the Section 8(b)(1)(A) proviso speaks only of union control over "retention of membership," *Allis-Chalmers* made clear that a by-law within an area of legitimate union concern can be enforced by such lesser and traditional means as union fines, without losing the exemption Congress sought to preserve for internal union affairs. By way of contrast, where a member was expelled from the Union for conduct this Court found to fall outside the area of legitimate union concern, *Marine Workers* declined to apply the exemption of the Section 8(b)(1)(A) proviso

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[14] That is not to say that a union can excuse resort to employment sanctions or physical violence as forms of union discipline; Congress outlawed these particular actions in enacting Section 8(b)(1). See *Labor Board* v. *Drivers,* 362 U.S. 274. It is the resort to employment sanctions which led to the finding of a violation in *Printz Leather Co., Inc.,* 94 NLRB 1312, a case on which petitioners place much reliance. Indeed, all apart from that resort to a sanction forbidden by the statute, the case involved an employee who was not a union member (see 94 NLRB at 1327, n. 23) and thus the Section 8(b)(1)(A) proviso question was not involved in any way. Petitioners' reliance on the *Printz Leather* ruling that a non-union employee has a Section 7 "right to work" free from union coercion begs the point here—that when it comes to union members the Section 8(b)(1)(A) proviso expressly *exempts them* from the ban on union restraint of "employees in the exercise of the rights guaranteed in Section 7".

even in its most literal sense. Accordingly it seems clear that the *form* of union discipline is not controlling, this Court having held discipline not expressly mentioned by Congress to be encompassed within the intended exemption where genuine union regulation is involved, while a form of discipline falling within the express exemption was held forbidden where the rule fell outside the area of legitimate union concern.

Nor, we submit, is the guide to Section 8(b)(1)(A) to be found in anything as loose as petitioners' suggested recourse to general policy considerations or judicial evaluations of the merits of union regulations.[15] Where Congress has granted jurisdiction—as in the anti-trust laws—this Court has occasionally resorted to a "rule of reason" to define the outer limits of that grant. But the present issue concerns not a grant but rather a restriction of jurisdiction. To accept petitioners' suggestion of a substantive review standard would be to transform a clause preserving from Board intrusion "the right of a labor organization to prescribe its own rules . . ." into a clause upholding "the right of a labor organization to prescribe those rules which can win approval from the National Labor Relations Board." As this Court noted in rejecting so broad a Board jurisdiction in *Allis-Chalmers*, even when it enacted the 1959 Landrum-Griffin provisions after a thorough review of the entire subject, Congress chose only to grant procedural protections in the area of union membership regulations (388 U.S. at pp. 193-195). The fatal defect of the "policy" test offered by petitioners is that it would put the Board precisely into the business of reviewing and supervising union regulations which Congress in enacting Section 8(b)(1) clearly intended the Board *not* to undertake.

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[15] As the Trial Examiner noted, petitioners' suggested rule "envisages a power in us [the Board] to pass upon whether a union rule is 'reasonable' under a test which includes an appraisal of its social desirability" (A. 60).

If the key to the applicability of Section 8(b)(1) is neither the form of discipline employed nor Labor Board judgments concerning the merits or desirability of a challenged union rule, what then is the guiding principle? *We suggest that where specific provisions of Section 8(b) secure freedom from union restraint, union discipline impairing such freedom may infringe Section 8(b)(1) notwithstanding the proviso, but in no event does a violation arise from the claim by a union member that Section 7 gives him a general "right to refrain" from union rules.* Of course, in precluding resort to Section 8(b)(1) of the statute through a union member's claim of a right to refrain from union rules, the Act assumes that there is in fact a genuine union rule underlying the discipline imposed upon the member. Such would not be the case if, beyond the area of union interests and affairs, a union sought to govern members in their exercise of personal or constitutional rights. Thus, a by-law could not fairly be defended as a union membership regulation if it sought to restrict the individual's personal liberties outside the ambit of the union hall and the work relationship, such as the right to worship, to vote, to associate and to conduct his personal affairs. While the union has a wide ambit of concern to assure membership solidarity in the common interest, there is a point at which the concept of *ultra vires* applies to secure the member from organizational intrusion upon his individual affairs and freedoms.

But within the area of membership regulation in the legitimate interests of the union and its members, it appears clear that the statute will not permit Labor Board intrusion on any theory that union members have a "protected" Section 7 right to defy their union's rules. What Section 8(b)(1)(A) precludes from Board authority is precisely the Section 7 argument tendered in this case in

the dissenting opinion of Board Member Leedom (A. 141), to the effect that: "In refusing to abide by the Union rule, the employees were exercising their Section 7 right to refrain from Union activity. In fining the employees, the Union was attempting to force these employees to cease exercising that Section 7 right." As this Court found in *Allis-Chalmers*, acceptance of such reasoning simply emasculates the exempting purpose of the Congress emphasized by the proviso to Section 8(b)(1)(A). Section 8(b)(1) in its "restrain or coerce" proscription does not grant employees the right to be union members on their own terms, abiding only by those union rules with which they agree or which the Labor Board and the courts might uphold as reasonable or desirable.[16]

While within the area of legitimate union concern regulation of members is thus wholly preempted from Section 8(b)(1) restriction, no such immunity is found where the union rule enforced upon the member has the effect of transgressing specific guarantees found in other provisions of Section 8(b). For instance, the protection of Section 8(b)(2) against a union causing an employer to discipline an employee except for non-payment of dues cannot be avoided by a union rule which applies a member's dues payments to an unpaid disciplinary fine, causing him to be in arrears on his periodic dues and subject to employer discharge (*Bay Counties District Council*, 145 NLRB 1775, enf'd, 352 F. 2d 745). Similarly, Section 8(b)(3) requiring collective bargaining with the employer on wages, hours, and working conditions, may be violated if the union adopts a rule impinging on employer rights and

[16] Illustrative of union regulations which Congress clearly sought to preserve from Board review under Section 8(b)(1) is *Minneapolis Star and Tribune Co.*, 109 NLRB 727, where a union member was fined for refusal to attend meetings and perform picket duty during a strike. To make such discipline a violation of the statute would simply outlaw union enforcement of membership rules.

declines to negotiate thereon with the employer; enforcement of the union rule upon the member in such a case would violate Section 8(b)(1) (see *Associated Home Builders* v. *NLRB*, 352 F. 2d 745). In like vein, disciplinary enforcement of a union regulation violates Section 8(b)(1) if it would require the member to engage in a secondary boycott violating Section 8(b)(4) (*Bricklayers Local No. 2 (Robert L. Willis)*, 166 NLRB No. 26) or picketing forbidden by Section 8(b)(7). *Marine Workers* is another example of a specific protection by the statute of an interest beyond that of the dissident member-employee—the interest of the Board and the public in free access to the statutory process.[17]

These examples illustrate that Congress in safeguarding union regulation of members from Labor Board review did not go so far as to grant unions immunity by membership discipline to violate Section 8(b) rights—particularly the rights of employers and the public. Statutory freedom of internal union regulation cannot be stretched so far as to support union discipline requiring the member to transgress the rights of others which the statute expressly protects. That, in substance, we deem to be the holding of this Court in *Marine Workers*.

In sum, the applicability of the Section 8(b)(1)(A) exemption for union regulation turns upon whether the regulation is confined to the area of union concern over the members' conduct or reaches beyond it to transgress the statutory rights of others protected under Section 8(b).

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[17] It should be noted that in *Marine Workers* no express right under Section 8(b) was transgressed by union discipline of a member for filing a charge with the Labor Board; but the right of access to the Board secured by Section 8(a)(4) against employer interference was read into Section 8(b) by implication in rulings of the Board and reviewing courts. See Local 138 IUOE (*Charles Skura*), 148 NLRB 679, 681-682; *Roberts* v. *NLRB*, 350 F. 2d 427, 428.

In that event only does union discipline lose the exemption from Section 8(b)(1). That construction, we submit, emerges not only from the rulings in *Allis-Chalmers* and *Marine Workers*, but was the thrust of this Court's emphasis in *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 620, that "the protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed [by the proviso to § 8(b)(1)(A)] the assertion of any such power has been expressly denied."

Conclusion

The Union by-law here in issue is justified from any point of view in the interest of the Union and its members, and does not infringe the statutory rights of the employer or the public. That is what the Board held in this case, and upon the record before this Court its ruling must be sustained.

It is respectfully submitted that the judgment of the Court of Appeals sustaining the Labor Board's Decision and Order should be affirmed.

Respectfully submitted,

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APPENDIX A

PERCENT OF PRODUCTION AND RELATED WORKERS PAID ON INCENTIVE BASIS IN MACHINERY MANUFACTURING ESTABLISHMENTS, UNITED STATES AND REGIONS, MID-1966*

Type of incentive wage systems	United States	New England	Middle Atlantic	Border States	Southeast	Southwest	Great Lakes	Middle West	Mountain	Pacific
All incentive workers	16.5	26.4	15.7	21.8	9.8	4.4	17.5	21.9	3.7	1.7
Piecework systems	6.1	11.0	1.9	5.6	5.5	.2	8.3	3.8	2.9	.1
Straight piecework—										
Individual	4.7	6.5	1.9	4.9	5.2	.2	6.6	1.8	2.9	.....
Group	.9	.9	.1	.8	.3	(1)	1.4	.5	.....	.1
Differential piecework—										
Individual	.5	3.5	.....	.....	.....	.....	.2	1.5	.....	.....
Group	(1)	.1	.....	.....	.....	.....	.1	.....	.....	.....
Production bonus systems	10.2	15.0	13.0	16.2	4.4	4.1	9.2	18.1	.8	1.7
Workers earnings vary:										
In same proportion as output—										
Individual	7.2	10.7	7.7	11.5	2.1	2.1	7.1	13.0	.8	1.0
Group	2.3	2.3	3.8	4.0	2.3	1.1	1.6	5.0	.....	.6
Proportionately less than output—										
Individual	.3	.7	1.0	.....	.....	.....	.2	.1	.....	.....
Group	(1)	.1	.....	.....	.....	.....	(1)	.....	.....	.....
Proportionately more than output—										
Individual	.1	.5	(1)	.....	.....	.9	(1)	.....	.....	.....
Group	(1)	.....	.....	.....	.....	.....	(1)	.....	.....	.....
In proportions which differ at different levels of output—										
Individual	.1	.....	.6	.....	.1	.....	.1	.....	.....	.....
Group	.1	.6	(1)	.7	.....	.....	.1	.....	.....	.....
Other types of incentive systems	.2	.4	.7	.....	.....	.....	.....	.....	.....	.....

* Taken from Table A1, p. 120, of "Industry Wage Survey, Machinery Manufacturing, Mid-1966," United States Department of Labor Bulletin No. 1563.

[1] Less than 0.05 percent. (Because of rounding, sums of individual items may not equal totals.)

APPENDIX B

AGREEMENT

UNION CONTRACT CHANGES (1965)

The following revisions of the 1962 Agreement between Wisconsin Motor Corporation and Local 283 of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (AFL-CIO) have been agreed upon by the representatives of the Company and the International and Local Union, to be incorporated into the new Agreement effective February 1, 1965.

(NOTE: Underscoring is used below only to indicate the changes in language in the old provisions, and is not to be used in the final draft.)

INTRODUCTION: Except as agreed below, all other agreements and all provisions of the May 1, 1962 to February 1, 1965 Agreement shall remain unchanged and will be placed in their respective positions in the new Agreement . . .

The Union agrees to increase the Production Ceilings an additional 3¢.

The Union also agrees to sit down with Management within the next few weeks to work out some departmental problems existing in the Assembly areas.

All signed Agreements reached between Local 283-UAW and the Wisconsin Motor Corporation during the life of the May 1, 1962 to February 1, 1965 Agreement and listed in the original Local 283-UAW Proposal dated December 1, 1964 will be incorporated in the

new February 1, 1965 to February 1, 1968 Agreement under Clarifications and Interpretations and referred to by the parties as provided under Par. 59 Sec. 1 of the new Contract.

It was also agreed during these negotiations that a suitable East Entrance from the Plant #1 parking lot will be provided in addition to the main plant entrance from Burnham Street.

Dated: March 19, 1965

FOR THE COMPANY:

H. A. Todd,
President

A. O. Olson,
Industrial Relations Director

A. H. LeSage,
General Superintendent

D. A. Lukasik,
Personnel Manager

FOR THE UNION:

Peter Zagorski,
President, Local 283 UAW

Dale L. Steinfeldt,
Recording Sec'y, Local 283 UAW

R. E. Majerus,
Int'l Rep., Region 10 UAW

Harvey Kitzman,
Director, Region 10 UAW